



**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**RSA-5588-2018 (O&M)
Date of Decision: 18.07.2024**

KANTA YADAV AND ANOTHERAppellant(s)

VERSUS

NAVEEN KUMAR AND OTHERSRespondent(s)

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Vikas Singh, Advocate with
Mr. G.S. Brar, Advocate and
Ms. Anamika Sheoran, Advocate
for the appellants.

HARKESH MANUJA, J. (Oral)

CM-4500-C-2022

By way of present application prayer is made for seeking amendment of the plaint at the stage of present regular second appeal, seeking permission to include the plea of suit land being ancestral in the hands of deceased-Deep Chand and based thereupon the appellants-plaintiffs claiming themselves to be coparceners and entitled for their share in the estate left by their father Deep Chand in terms of Hindu Succession (Amendment) Act, 2005.

I have heard learned counsel for the applicant-appellants and gone through the contents of the application.



At this stage, once the concurrent findings of fact has already been recorded by the Courts below as regards the valid execution of Will dated 09.06.2009 (Ex. P-1) in favour of respondent Nos.1 to 4 and no such plea been raised at the instance of the applicant either before the trial Court or even the First Appellate Court; having not even pressed for any such issue at an appropriate stage no such prayer can be allowed at this belated stage. The plea of appellants-plaintiffs being coparceners was always available to them at the filing of suit, yet the same was never raised. In such circumstances once a right has occurred in favour of respondents-defendants, the same cannot be defeated by permitting amendment of plaint followed by de-novo trial.

Thus, at this stage, in the humble opinion of this Court, the amendment as prayed for by the applicant-appellants cannot be permitted.

Accordingly, the application is dismissed.

RSA-5588-2018

1. By way of present appeal, challenge has been laid to the judgments and decrees dated 30.09.2014 and 22.02.2018 passed by the Courts below whereby suit for declaration, joint possession and permanent injunction, filed at the instance of appellants-plaintiffs, claiming themselves to be joint owner in possession of 2/7th share of the estate left by their deceased father-Deep Chand as well as restraining respondents-defendants from alienating the suit land was dismissed.



2. In the present case, the dispute revolves around the estate left by Deep Chand, who happened to be the father of the appellant Nos.1 and 2, defendant Nos.1 to 4 and husband of respondent No.5. Claiming themselves to be the successors of Deep Chand, the appellants filed a suit for declaration qua 2/7th share of the estate left by him situated in village Teekli Badshahpur Aklimpur and Samaspur along with prayer for seeking joint possession thereof as well as for permanent injunction, restraining respondent-defendants from alienating the same during the pendency of the suit. It was pleaded that the alleged Will dated 09.06.2009 as set by respondents-defendants after the death of Deep Chand was not a valid document as the signatures of testator were obtained without knowledge.

Simultaneously, mutation proceedings qua the estate left by Deep Chand in favour of respondent Nos.1 to 4, based on Will dated 09.06.2009 in their favour from Deep Chand were also assailed.

3. Upon notice, respondents-defendants appeared and filed their written statement wherein it was pleaded that the Will dated 09.06.2009 executed by their father deceased-Deep Chand was registered document and was validly executed by him in his sound disposing mind. It was further pleaded that in addition to the Will dated 09.06.2009, some of the properties were even transferred by Deep Chand in favour respondent Nos.1 to 4 by virtue of registered lease deed dated 06.07.2009 as well and thus, the suit was liable to be dismissed.



4. In view of the aforesaid pleadings, following issues were framed by the trial Court:-

- “1. Whether the plaintiffs are owners to the extent of 2/7th share and defendants are also owner 5/7 share of the land detailed in para no. 2 (a) to (m) of the plaintiff? OPP
2. Whether Deep Chand executed and got registered valid Will dated 9.6.2009 in favour of the defendants no. 1 to 4? OPD
3. Whether the suit is not maintainable in the present form? OPD
4. Whether the suit is time barred? OPD
5. Whether the plaintiffs have suppressed the issue and material facts from this court and have not come with clean hands? OPD
6. Whether the plaintiffs are estopped by their act, conduct, acquiescence to file the suit? OPD
7. Relief.”

5. The learned trial Court vide judgment and decree dated 30.09.2014 dismissed the suit filed by the appellants-plaintiffs while recording that the registered Will dated 06.09.2009 was validly executed by the testator-Deep Chand in favour of respondents-defendants. Aggrieved thereof, the appellants-plaintiffs filed first appeal which came to decline vide judgment and decree dated 22.02.2018 passed by the Court of learned Additional District Judge, Gurugram.

6. Impugning the aforementioned judgments and decrees dated 30.09.2014 and 22.02.2018, learned counsel for the appellants



submits that Will dated 09.06.2009 set up by respondent Nos.1 to 4 in their favour was a forged and fabricated document and was even surrounded by suspicious circumstances as no reason at all was described in the Will so as to discard his daughters by the testator. He further submits that the land in the hands of Deep Chand was Joint Hindu Family-coparcenary in nature and thus, after coming into force of Section 6 of the Hindu Succession Act, 2005, the daughters being coparceners were entitled for their 2/7th share in the estate left by Deep Chand and thus, prayed for setting aside of the impugned judgments and decrees.

7. I have heard learned counsel for the appellants and gone through the paper book. I am unable to find substance in the submissions made by learned counsel for the appellants.

8. Both the Courts below vide impugned judgments and decrees dismissed the suit filed at the instance of appellants-plaintiffs while holding that the registered Will dated 09.06.2009 executed by deceased-Deep Chand in favour of respondent Nos.1 to 4 was validly proved on record as Exhibit D-1. As per the record, the Will in question was drafted by Sh. Mahesh Kumar Chauhan, Advocate, the same was read over to the testator Deep Chand who after hearing and understanding the contents thereof signed the same in the presence of the attesting witnesses and to support the same, the scribe-cum-one of the attesting witness Sh. Mahesh Kumar, Advocate, appeared as DW-2. In addition, even the other attesting witness namely Rishikesh s/o



Ram Bharose also appeared as DW-1 so as to prove the attestation of Will in accordance with Section 63 of the Indian Succession Act, 1925 read with Section 68 of the Indian Evidence Act, 1872 and also that at the time of execution of Will dated 06.09.2009, the testator-Deep Chand was in sound disposing mind. Furthermore, as regards the suspicious circumstances projected by the appellants that no explanation was rendered in the Will while discarding the daughters, the same was not made out in the given facts and circumstances as the Will in question contained specific covenant that the testator got married his two daughters and even gave them adequate jewellery as well as other dowry articles besides, spending money upon their marriages. In such circumstances, the testator having deviated from the natural line of succession having bequeathed his entire estate in favour of his four sons cannot be treated as suspicious circumstance.

9. Moreover, no merit can be found in the submission made on behalf of the appellants that they became coparceners and were entitled for the estate left by the deceased-Deep Chand upon enactment of Hindu Succession Act, 2005 as no such pleadings of the estate in the hands of Deep Chand being of Joint Hindu Family coparcenary nature was ever pleaded in the plaint nor any such issue was pressed before the Court below. Furthermore, even the property in question was never proved to be ancestral in the hands of deceased-Deep Chand as no excerpts were ever proved on record through the concerned revenue officials to establish the said fact.



10. In view of the discussion made hereinabove, no interference is called for in the concurrent findings of fact recorded by the Courts below, there being no misreading of pleadings or any evidence available on record on the part of the two Courts; neither any material evidence having lost sight off, the present appeal being devoid of merits is hereby dismissed.

11. Pending application(s), if any, shall also stand disposed of.

July 18, 2024

Sangeeta

(HARKESH MANUJA)

JUDGE

Whether reasoned/speaking:	Yes/No
Whether reportable:	Yes/No